

## **JUDICIAL COUNCIL MEETING**

### **Minutes of December 15, 2000, Meeting**

The Judicial Council of California meeting began at 8:45 a.m. on Friday, December 15, 2000, at the Administrative Office of the Courts Judicial Council Conference Center in San Francisco, California, on the call of Chief Justice Ronald M. George, chair.

**Judicial Council members present:** Chief Justice Ronald M. George; Justices Richard D. Aldrich, Marvin R. Baxter, Carol A. Corrigan, and Richard D. Huffman; Judges Aviva K. Bobb, Leonard P. Edwards, Brad R. Hill, Donna J. Hitchens, Steven E. Jahr, Ana Maria Luna, Ronald B. Robie, Ronald M. Sabraw, and Ronald L. Taylor; Mr. Michael Case, Mr. John J. Collins, Ms. Pauline W. Gee, and Mr. Rex Heeseman; and **advisory members:** Judges William C. Harrison and Wayne L. Peterson, Commissioner Bobby R. Vincent, Mr. Frederick K. Ohlrich, Mr. Arthur Sims, and Mr. Alan Slater.

**Absent:** Judge Gail A. Andler; Senator Martha Escutia; and Assembly Member Darrell Steinberg.

**Others present included:** Mr. William C. Vickrey; Justice Arthur G. Scotland, Ms. Pamela Aguilar, Mr. Jason Doiy, Mr. Ralph Flageollet, Ms. Sheila Gonzalez, Ms. Beth Jay, Ms. Carole Prescott, **staff:** Ms. Heather Anderson, Ms. Jessica Fiske Bailey, Mr. Patrick Ballard, Mr. Christopher Belloli, Ms. Deirdre Benedict, Mr. Michael Bergeisen, Mr. Stephen Bouch, Mr. John Burke, Ms. Francine Byrne, Ms. Joan Callen, Mr. James Carroll, Ms. Roma Cheadle, Ms. June Clark, Ms. Lesley Duncan, Ms. Claudia Fernandes, Mr. Michael Fischer, Ms. Beth Gatchalian-Litwin, Ms. Janet Grove, Mr. José Guillén, Ms. Sue Hansen, Ms. Jacquelyn Harbert, Ms. Lynn Holton, Ms. Susan Hough, Mr. Cyrus Ip, Ms. Melissa Johnson, Ms. Camilla Kieliger, Mr. Shawn Landry, Mr. Ray LeBov, Ms. Suzanne Mackey, Mr. Russell Mathieson, Mr. Frederick Miller, Ms. Diane Nunn, Mr. Patrick O'Donnell, Mr. Ronald Overholt, Ms. Jody Patel, Mr. John Remington, Mr. Victor Rowley, Ms. Eve Sandler, Mr. Frank Schultz, Ms. Dale Sipes, Ms. Lucy Smallsreed, Ms. Sonya Smith, Ms. Linda Theuriet, Ms. Karen Thorson, Ms. Alice Vilardi, and Ms. Pat Yerian; **media representatives:** Ms. Donna Domino, *The L.A. Daily Journal*; Ms. Sonia Giordani, *The Recorder*; and Mr. Art Ramstein, California Service Bureau.

Except as noted, each action item on the agenda was unanimously approved on the motion made and seconded. (Tab letters and item numbers refer to the binder of Reports and Recommendations dated December 15, 2000, which was sent to members in advance of the meeting.)

## **Approval of the Minutes of the October 27, 2000, Judicial Council Meeting**

### *Council action:*

Justice Richard D. Huffman moved that the Judicial Council approve the minutes of the October 27, 2000, meeting of the Judicial Council.

The motion passed.

## **Council Committee Presentations**

### *Executive and Planning Committee*

Justice Richard D. Huffman, chair, reported that the Executive and Planning Committee had met twice by phone since the last council meeting.

At both meetings, the committee considered items submitted for the December 15 council meeting, determined readiness for council action, and set the agenda.

Additionally, the committee, acting on behalf of the council, approved the allocation of \$1.35 million in grant funds to Court Appointed Special Advocate (CASA) programs.

### *Policy Coordination and Liaison Committee*

Justice Marvin R. Baxter, chair, reported that the Policy Coordination and Liaison Committee had met twice since the last Judicial Council meeting. At both meetings, the committee reviewed proposals for council-sponsored legislation in 2001. The committee's recommendations on several proposals are on today's agenda for council action; other proposals will be presented at the January council meeting.

The legislative proposals address a range of topics, including new judgeships, juvenile law, traffic, and acceptance of credit cards. Justice Baxter noted that the committee recommended that the proposal dealing with trial court funding cleanup be placed on the council's discussion agenda. The remainder of the items are on consent.

Justice Baxter mentioned that Judicial Council and AOC representatives recently met with the California District Attorneys Association. In the next few months, meetings will be scheduled with Attorney General Bill Lockyer; the State Bar; the California Defense Bar; the California State Association of Counties; and the Consumer Attorneys of California. Visits such as these are scheduled annually as part of the agency's ongoing effort to foster and enhance relations with other court-related groups.

### *Rules and Projects Committee*

Judge Steven E. Jahr, chair, reported that the Rules and Projects Committee had met once since the last council meeting to consider rules and forms on today's council agenda.

Judge Jahr referred council members to the handout regarding the committee's recommendations on the rules and forms items on the December meeting agenda.

#### *Court visit reports*

Judges Ana Maria Luna and Steven Jahr reported on the council visits they led to local courts as part of the council's outreach program. Judge Luna stated that a team of Judges Aviva K. Bobb and Wayne L. Peterson, led by her and assisted by several AOC staff, visited the Monterey, Santa Cruz, and San Benito courts. She noted that a major concern in all three of these court systems is inadequate facilities. Facilities issues include buildings with asbestos, leaking, and heating and ventilation problems; insufficient workspace to house administrative staff; scarce parking for litigants, jury members, and the public; restricted security and inmate transportation issues; and lack of storage and filing space. Judge Luna also reported that the courts expressed concern about their difficulty in recruiting qualified applicants for vacant court positions. All three courts are located close to Silicon Valley, where salaries tend to be higher than court salaries. It is particularly difficult for the courts to recruit and retain employees with skills in information technology.

Judge Luna said that members of the site visit team were impressed with the way the courts were implementing unification measures and collaborating in solving regional problems and sharing creative solutions.

Judge Jahr reported that Judge Luna and Judge William C. Harrison and several members of AOC staff joined him on a visit to the Yolo and Sacramento County courts. He stated that Yolo courts were challenged by the need to repair and expand court facilities; the often strained relationship between the county and court; the need to identify continued funding for innovative programs that have not been approved as elements of the baseline budget; and the need to make efficient use of technology. Judge Jahr commented that the site visit team was impressed with the court's team management approach to solving problems and creating programs that serve the county, such as court tours, Juvenile Violence Court, and Unified Family Court.

Judge Jahr reported that the Sacramento County courts shared several major accomplishments, including: technological advances and the construction of a family relations courthouse. The court has both an Intranet site that enables court employees to communicate with each other and an Internet site that facilitates communication with the public. The court is creating an infrastructure to support improved public access by making court forms, case information, calendar information, case filing, and fee/fine payment available online. Judge Jahr said that the visitors were very impressed with the careful planning that went into the design and security of the new courthouse.

## CONSENT AGENDA<sup>1</sup>

### ITEM 1 JUDICIAL COUNCIL-SPONSORED LEGISLATION

#### Item 1A Allowing the Court to Proceed Directly on a Juvenile's Traffic Infraction (Welf. & Inst. Code, § 257; Veh. Code, § 40513(b))

Under current law, when a minor is charged with an infraction traffic offense, he or she can consent to a hearing directly on the notice to appear before a juvenile hearing officer, a referee, or a judge of the juvenile court. If the minor does not consent to proceed on the notice to appear, the court must transfer the case to the district attorney for action. The district attorney then has the discretion to either file a petition to answer charges or reject the matter, which results in a dismissal.

The paperwork required of the court to process the request for petition is time-consuming and usually pointless. Limited district attorney resources to prosecute these low-level offenses means that in many cases the petition is not filed and the matter is dismissed.

The Policy Coordination and Liaison Committee recommended sponsoring legislation to allow the court to proceed directly on the notice to appear. This proposal mirrors the law currently for adults, eliminates delay and the duplication of appearances, and allows the court to dispose of the matter by proceeding on the notice to appear.

#### *Council action:*

The Judicial Council approves sponsoring legislation in 2001 to amend Welfare and Institutions Code section 257 and Vehicle Code section 40513(b) to allow the court to proceed directly on the notice to appear rather than transferring the case to the district attorney for action.

#### ~~Item 1B Juror Fees: Daily Payment in Civil Cases During Extended Voir Dire (Code Civ. Proc., § 631(a))~~

This item was deleted from the agenda.

#### Item 1C Require Court to Make Finding That Exhibit Is "Harmful Matter" (Pen. Code, § 1417.8)

Current law prescribes special handling of certain evidence in criminal cases, including photographs of minors that meet the statutory definition of harmful matter. But current law does not specify the process to be used to determine whether the photographic

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<sup>1</sup> There is no item 1I or 1i.

evidence meets the definition. The Policy Coordination and Liaison Committee recommended sponsoring legislation to clarify responsibility for defining and handling “harmful matter” exhibits.

*Council action:*

The Judicial Council approves sponsoring legislation to amend Penal Code section 1417.8 to require the court, on its own motion or on the motion of the People, to make a finding that photographs of minors are harmful matter as defined in Penal Code section 313 and to direct the preservation, handling, and disposition of the material accordingly.

**Item 1D      CASA Employees and Volunteers: Mandated Reporting of Child Abuse (Pen. Code, § 11166)**

Employees and volunteers in Court Appointed Special Advocate (CASA) programs are currently subject to conflicting standards regarding their duty to report known and suspected child abuse. The Policy Coordination and Liaison Committee recommended sponsoring legislation to clarify the responsibility of CASA employees and volunteers to report child abuse.

*Council action:*

The Judicial Council approves sponsoring legislation in 2001 to amend Penal Code section 11166 to add Court Appointed Special Advocates (CASA) employees and volunteers to the list of persons required to report known and suspected child abuse.

**~~Item 1E      Family Law and Domestic Violence Clean-Up (Code Civ. Proc., §§ 527.6 and 527.8; Fam. Code, § 3060; Welf. & Inst. Code, § 15657.03)~~**

This item was deleted from the agenda.

**Item 1F      Form Interrogatories: Clarification of Judicial Council’s Authority (Code Civ. Proc., § 2033.5)**

Code of Civil Procedure section 2033.5 requires the Judicial Council to develop form interrogatories for civil actions based on personal injury, property damage, wrongful death, unlawful detainer, breach of contract, family law, and fraud. The Civil and Small Claims Advisory Committee received a request to develop form interrogatories from attorneys who specialize in employment law. Current law does not specify employment law as one of the civil actions for which the council is required to approve form interrogatories. The Policy Coordination and Liaison Committee recommended sponsoring legislation to clarify that the council has authority to adopt form interrogatories for civil actions not required by statute.

*Council action:*

The Judicial Council approves sponsoring legislation in 2001 to amend Code of Civil Procedure section 2033.5 to clarify the council's authority to approve new form interrogatories.

**Item 1G      Commissions for Out-of-State Depositions (Code Civ. Proc., § 2026)**

Existing law regarding the issuance of commissions for out-of-state depositions provides that “the court shall issue a commission” and does not expressly require a motion or court order. The issuing of commissions is essentially a clerical function; rarely is there a dispute over the terms or directions of the commission. Nevertheless, many courts interpret the existing statute to require review and approval by a judicial officer, and the courts have adopted various procedures for obtaining the commission. The Policy Coordination and Liaison Committee recommended sponsoring legislation to allow the clerk to issue a commission.

*Council action:*

The Judicial Council approved sponsoring legislation in 2001 to amend Code of Civil Procedure section 2026 (c) to simplify the process of issuing commissions for out-of-state depositions by allowing the clerk to issue the commission instead of a judicial officer.

**Item 1H      Unclaimed Sums on Deposit With Court or County in Court Actions (Code Civ. Proc., § 1519.6)**

The Superior Court of Los Angeles County has recently been the subject of critical newspaper articles that questioned the court's handling of its Condemnation and Interpleader Trust Fund. The trust fund contains millions of dollars in unclaimed funds from cases dating back to the 1970s.

Currently, statutes prescribe that moneys in an eminent domain action are deposited with the State Treasury or the county treasurer and moneys in an interpleader action are deposited with the court. There are provisions for the escheat of unclaimed moneys on deposit with the state in eminent domain cases. There are no similar provisions for the escheat of the unclaimed funds on deposit with the county treasurer in eminent domain actions or on deposit with the court in interpleader actions. It is the responsibility of the depositor to request that the court release money owed them. If the money is not claimed, the court is unable to dispose of the funds. The Policy Coordination and Liaison Committee recommended sponsoring legislation to create a procedure for transferring unclaimed money to the state in eminent domain and interpleader actions.

*Council action:*

The Judicial Council approves sponsoring legislation in 2001 that creates a statutory mechanism for disposal of unclaimed moneys by providing for the transfer to the state of unclaimed moneys in eminent domain and interpleader actions.

**Item 1J      Disclosure of Information to Determine Work Product Privilege Claim  
(Evid. Code, § 915)**

Code of Civil Procedure section 2018 protects an attorney's work product from disclosure in the discovery process unless the court determines that denial of discovery will unfairly prejudice the party seeking discovery or will result in an injustice. According to the statute, "[a]ny writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories shall not be discoverable under any circumstances." The statute does not, however, set forth procedures for hearing disputes concerning the disclosure of attorney work product. In addition, there are no rules concerning the disclosure of information that is claimed to be attorney work product in order to allow the court to determine the validity of the claim. Consequently, the courts have adopted various procedures for hearing these disputes, and there is no uniformity concerning whether and in what manner information that is claimed to be attorney work product is disclosed.

Evidence Code section 915 sets forth rules for the disclosure of information to determine claims of other privileges. It limits disclosure of the material that is claimed to be privileged and also limits the use of in camera review of those materials. Evidence Code section 915 does not specifically apply to claims of attorney work product. The Policy Coordination and Liaison Committee recommended sponsoring legislation to amend Evidence Code section 915.

*Council action:*

The Judicial Council approves sponsoring legislation in 2001 to amend Evidence Code section 915 to add claims of attorney work product to the list of claims to which the rules in that section on disclosure of privileged materials apply.

**Item 1K      Credit Cards: Acceptance by Courts, Cities, or Other Public Agencies  
(Gov. Code, § 6159)**

The Policy Coordination and Liaison Committee recommended sponsoring legislation to provide additional options for defendants to pay fines in felony cases and to streamline state policy on acceptance of credit cards. The committee has recommended retaining the

prohibition against using a credit card for a bail payment for a felony but permitting the use of a credit card to pay felony fines.

*Council action:*

The Judicial Council approves sponsoring legislation in 2001 to expand the use of credit cards to allow persons to use them for the payment of felony fines.

**Item 2      Conflict-of-Interest Code for the Administrative Office of the Courts**

The Political Reform Act of 1974 requires public agencies to adopt conflict-of-interest codes. Conflict-of-interest codes are documents that set forth the rules and procedures by which a public agency's designated officers and employees are required to disclose certain personal financial interests. The financial interests required to be disclosed are those that could foreseeably be materially affected by decisions that these officers or employees are authorized to make or influence.

Since the AOC's Conflict-of-Interest Code was last amended in December 1999, two job classifications determined to warrant financial disclosure have been created at the AOC. The proposal would update and include the two new AOC classifications in the code. It would also add the members of the Family and Juvenile Law Advisory Committee to those required to disclose financial interests because committee members annually review and make recommendations on grants that could potentially have an effect on a member's financial interests.

*Council action:*

The Judicial Council approves adding two new AOC job classifications and the Family and Juvenile Law Advisory Committee membership to the Conflict-of-Interest Code for the Administrative Office of the Courts to bring the code up to date.

**Item 3      Equal Access Fund—Distribution of Funds for Partnership Grants**

The State Bar Legal Services Trust Fund Commission ("commission") proposed that the Judicial Council approve distribution of the portion of the Equal Access Fund designated for partnership grants (10 percent). State law authorizes the Judicial Council to distribute, through the commission, funds to legal services providers for programs conducted jointly with courts to provide legal assistance to pro per litigants.

AOC staff reviewed the commission's report, which shows that the commission followed the statutory requirements for conducting the grant process and evaluating proposals.



*Council action:*

The Judicial Council, under the authority of the Budget Act of 2000 which establishes the Equal Access Fund, approves the allocation of \$950,000 to the State Bar Legal Services Trust Fund Commission for distribution to legal services providers for programs conducted jointly with courts to provide legal assistance to pro per litigants (partnership grants).

**Item 4      Trial Court Financial Policies and Procedures (adopt Cal. Rules of Court, rule 6.707)**

Prior to state trial court funding, counties provided the courts with a broad range of financial support services. With the advent of state funding, trial courts have assumed greater responsibility for managing their budgets and financial affairs. However, many trial courts lack developed financial policies and procedures that would enable them to effectively perform the fiscal management services formerly provided by the counties. In addition, courts throughout the state employ widely varying methods of managing their finances, making it more difficult for the state to allocate funding to the courts in a way that maximizes resources.

*Council action:*

The Judicial Council, effective January 1, 2001, adopts rule 6.707 of the California Rules of Court, which requires the Administrative Office of the Courts to adopt a financial policies and procedures manual for the trial courts (the *Trial Court Financial Policies and Procedures Manual*).

**Item 5      Special Fund Allocations for Fiscal Year 2000–2001**

The Trial Court Funding Act of 1997 created two funds specifically to support special projects that improve the provision and administration of justice in the courts: the Judicial Administration Efficiency and Modernization Fund (JAEMF) and the Trial Court Improvement Fund (TCIF). In August 2000, the council approved allocating money from these two funds for pilot programs in complex civil litigation and civil alternative dispute resolution, ongoing court security, educational incentives, the Trial Court Litigation and Excess Liability Fund, community-focused strategic planning, and judicial liability insurance.

AOC staff recommended allocating \$1,398,500 from the TCIF to fund special projects, suballocating \$200,000 from the Litigation and Excess Liability Fund on a permanent basis for litigation-related expenses incurred on behalf of trial courts, and allocating \$995,000 from the JAEMF for projects to test the feasibility of remote telephonic interpreter services and to acquire distance learning equipment for the trial courts.

*Council action:*

The Judicial Council approves:

1. Allocating \$1,398,500 from the portion of the Trial Court Trust Fund reserve within the Trial Court Improvement Fund for statewide projects as follows:
  - a. Judgeship Needs Assessment Study (\$15,000)
  - b. Staffing Standards (\$150,000)
  - c. Relationship of Workload and Caseload Study (\$50,000)
  - d. Community-Focused Court Planning (\$40,000)
  - e. Jury Innovations Training Project (\$50,000)
  - f. Peremptory Challenge/Jury Size Project (\$100,000)
  - g. Trial Court Performance Standards Project (\$50,000)
  - h. Fairness Video (\$64,500)
  - i. Small Claims Study (\$200,000)
  - j. Human Resource Needs Assessment Study (\$400,000)
  - k. Online Training/Learn2® (\$129,000)
  - l. Translation of Domestic Violence Forms (\$35,000)
  - m. Publication of Statewide Family/Juvenile Materials (\$50,000)
  - n. Guardianship Study (\$65,000)
2. Suballocating \$200,000 on a permanent basis from the Litigation and Excess Liability Fund to defray a portion of the costs incurred by or on behalf of trial courts for outside counsel providing advice in labor and employment, contracting and procurement, or other areas of court administration.
3. Allocating \$995,000 from the Judicial Administration Efficiency and Modernization Fund to test the feasibility of remote telephonic interpreter services and to acquire distance learning equipment for the trial courts.

**Item 6      Trial Court Labor Relations Disputes—Writ Petitions (Gov. Code, § 71639.1) (adopt Cal. Rules of Court, rule 2211)**

The Trial Court Employment Protection and Governance Act (“the act”) sets forth a procedure for a trial court, an employee, or a recognized employee organization to seek relief for an alleged violation of a collective bargaining agreement, a memorandum of understanding, or the act’s labor relations statute. The act requires the Judicial Council to adopt rules of court that provide for the hearing and appeal process.

*Council action:*

The Judicial Council, effective January 1, 2001, adopts rule 2211 of the California Rules of Court to set forth the procedure for writ petitions filed under Government Code section 71639.1 for violations of labor relations agreements or the Trial Court Employment Protection and Governance Act's labor relations statute.

**Item 7            Disposal of Surplus Court Personal Property (adopt Cal. Rules of Court, rule 6.709)**

As part of the transition from county to state funding of the trial courts, all furniture, furnishings, and equipment used solely by a trial court on June 30, 1997, became the property of the court unless the county was prohibited from transferring title. Currently, there are not statutes or rules of court that address the power of a trial court to dispose of its surplus personal property. The Trial Court Presiding Judges and Court Executives Advisory Committees recommend adopting a rule giving courts express authority and specifying procedures to dispose of surplus court personal property.

*Council action:*

The Judicial Council, effective January 1, 2001, adopts rule 6.709 of the California Rules of Court, specifying the authority of a trial court to sell, exchange, or otherwise dispose of surplus personal property of the court.

**Item 8            Sanctions for Violations of the Rules of Court (amend Cal. Rules of Court, rules 222, 225, and 227)**

Rule 227 of the California Rules of Court presently authorizes superior courts to impose sanctions for failure to comply with the rules of court, local rules, and court orders. The sanctions authorized by this rule include payment of the opposing party's expenses and attorney fees, reimbursement or payment to the county, a change in the calendar status of the action, and statutory sanctions for failure to comply with local rules, in addition to any other sanction permitted by law.

In *Trans-Action Commercial Investors, Ltd. v. Firmaterr, Inc.* (1997) 60 Cal.App.4th 352, the Court of Appeal considered a challenge to a sanctions award of counsel fees and costs under rule 227 for causing a mistrial by repeatedly violating the trial court's in limine rulings. The Court of Appeal reversed the sanctions award. It held that rule 227 was invalid to the extent that it purports to allow sanctions inconsistent with the limits and conditions provided in an applicable statute. As a result of the *Trans-Action* ruling, the Civil and Small Claims Advisory Committee reconsidered rule 227.

*Council action:*

The Judicial Council, effective July 1, 2001:

1. Amends rule 227 to authorize monetary sanctions for failure to comply with the civil pretrial and trial rules of the California Rules of Court;
2. Amends rules 222 and 225 to eliminate the duplicative provisions in those rules regarding sanctions; and
3. Amends rule 225 to require the plaintiff to notify the court not only of cases that have settled, but also of ones “otherwise disposed of” in order to clarify the scope of the duty to notify the court.

**Item 9           Discovery Rules (amend Cal. Rules of Court, rule 335 and adopt rule 341)**

The California Rules of Court presently contain a rule on the format of discovery motions. Specifically, rule 335 requires separate statements in support of motions to compel further responses to interrogatories, inspection demands, or admission requests, and in support of motions to compel answers to questions or to compel production of tangible things at a deposition. However, the requirement of a separate statement does not extend to other discovery motions for which a separate statement may be useful. This limitation makes these motions more difficult for courts and parties to review.

The rules of court do not presently include any provisions relating to discovery sanctions. The Civil and Small Claims Advisory Committee recommended revising rules to clarify sanctions and the format of discovery motions.

*Council action:*

The Judicial Council, effective July 1, 2001:

1. Amends rule 335 of the California Rules of Court on the format of discovery motions to identify more clearly and completely the motions for which separate statements are required and the content of the separate statements; and
2. Adopts rule 341 of the California Rules of Court to expressly provide that a court may impose sanctions in favor of a party who files a motion to compel discovery, even if the opposing party files no opposition, withdraws its opposition, or provides discovery after the motion was filed.

**Item 10           Recommendation for 30 Judgeships for Fiscal Year 2001–2002**

At its October 2000 Judicial Council meeting, the council directed staff to reconfirm the need for new judgeships in 14 trial court systems in which new judgeships had been proposed by the Court Profiles Advisory Committee (CPAC) in October 1998. The council requested this review because a council-approved Budget Change Proposal for

funding 30 new trial court judgeships is being forwarded to the Department of Finance (DOF), and there remain 59 of the 79 proposed new judgeships for 14 trial court systems from the October 1998 CPAC list.

*Council action:*

The Judicial Council approves:

1. Sponsoring legislation for the creation of the 30 judgeships in the following counties and ranked order:
  - a. San Bernardino
  - b. Sacramento
  - c. Fresno
  - d. San Bernardino
  - e. Sacramento
  - f. Alameda
  - g. Riverside
  - h. Orange
  - i. Los Angeles
  - j. Los Angeles
  - k. Orange
  - l. Los Angeles
  - m. Los Angeles
  - n. Los Angeles
  - o. Riverside
  - p. Orange
  - q. Los Angeles
  - r. San Diego
  - s. Los Angeles
  - t. Los Angeles
  - u. Los Angeles
  - v. Shasta
  - w. Stanislaus
  - x. Santa Clara
  - y. San Bernardino
  - z. Sacramento
  - aa. Fresno
  - bb. San Bernardino
  - cc. Ventura
  - dd. Contra Costa
2. Sponsoring legislation to authorize the reallocation of funding for the Superior Court of Santa Cruz County to create a judgeship and simultaneously eliminate a commissioner position.

## **DISCUSSION AGENDA**

### **Item 11 Subordinate Judicial Officers**

Ms. Dale Sipes, AOC Deputy Administrative Director; Mr. Frederick Miller, Manager of the AOC's Research and Planning Unit; and Ms. Sonya Smith, AOC Research Attorney, presented the report.

Ms. Sipes noted that under state trial court funding, the creation of subordinate judicial officers (SJOs) is no longer exclusively a local matter. SJOs are funded from the same sources as judgeships, and there are policy considerations regarding when and whether to request judgeships versus SJO positions for the trial courts.

Ms. Sipes reported that there has been enormous growth in the number of SJOs after a decade without new judgeships: SJOs account for one-quarter of the state's judicial resources, representing a 60 percent increase during a 10-year period when almost no new judgeships were authorized. She stated that a number of trial courts have expressed interest in creating new SJO positions.

Ms. Sipes said that Senate Bill 2140, which takes effect January 1, gives the council the responsibility to authorize the number and type of SJOs. At the last council meeting staff presented a report with three recommended policies to guide the exercise of this responsibility. No action was taken on the recommendations at that meeting. Since then the recommendations have been circulated widely for comment.

The recommended policies promote the council's beliefs that SJOs are extremely important to the justice system in California, more family law practitioners need to be appointed to the bench and assigned to family law matters, and the definition of SJO needs to be reconsidered in light of trial court unification. The policies also hope to resolve a concern raised by the council that a structure is developing in which hired SJOs are dealing with family and juvenile law matters instead of judges.

Ms. Sonya Smith reviewed action on the draft report and recommendations since the council considered it in October. More than 100 individuals and a number of groups commented on the report. Many of the comments were favorable and many provided improvements. In response, several of the recommendations were revised and several new policy guidelines were added.

Mr. Frederick Miller reviewed the substance of the recommendations. He stated that the policies make it clear that SJOs perform a valuable role in the courts. The policies affirm that the SJOs' primary role is to perform subordinate judicial duties. The policy does not prohibit the use of SJOs as temporary judges and states that they may be used as such when a shortage of judges makes it necessary.

Mr. Miller said that the policy provides a method for creating a more appropriate balance in the ratio of SJOs to judges by allowing the conversion of vacant SJO positions to judgeships. He noted that the recommendation had been revised since the last council meeting to clarify that SJOs will not be displaced by conversion but may be converted only when there is attrition, and that the proposal is not intended to convert all existing SJOs to judges. The revised proposal also ensures local court participation in the decision to convert to make best use of local courts' knowledge regarding their workloads and available judicial resources. Mr. Miller pointed out that conversion would not change the number of judicial officers, just the ratio of judges to SJOs.

Chief Justice Ronald M. George suggested a change in the wording of recommendation 2 to clarify the intent of the proposal. He suggested that the recommendation read that "upon a recommendation by the Judicial Council developed in consultation with the affected court, a vacant subordinate judicial officer position shall be converted to a judgeship and the Governor may appoint a replacement to the position."

Justice Marvin R. Baxter expressed additional concern with the wording in recommendation 2. He wanted to make sure that there was no gap between converting the SJO position to a judgeship and appointing a judge to the position. He suggested that staff rework the recommendation to clarify that the position will remain an SJO position until such time as the Governor makes an appointment, such as by adding the following sentence: "The conversion shall take effect on the Governor's appointment of a judge to the converted position."

Commissioner Bobby R. Vincent stated that the staff report had been discussed recently by the California Court Commissioners Association. He stated that the association requested that the council direct the Policy Coordination and Liaison Committee to consider sponsoring legislation to use the term "associate judge" instead of "subordinate judicial officer" to alleviate the perception of the lesser status of SJOs that was noted in the report.

Commissioner Vincent strongly urged the establishment of family and juvenile law courts. Chief Justice George remarked that establishing a separate family and juvenile law court is different from establishing unified practices and procedures. To establish a separate court may be contrary to long-standing council policy. Commissioner Vincent stated that it was essential to ensure that courts are assigning experienced judicial officers to hear cases involving children and families. Chief Justice George stated that special treatment can be given to family and juvenile law cases without creating a separate court, which would go against the council's unification policy.

Judge Ronald L. Taylor asked whether it was the intent of trial court funding to prohibit courts from funding SJO positions if the court has money to permanently fund a new position. Mr. William C. Vickrey responded that the courts stating their ability to pay for new SJO positions are the same ones asking for increased funding to pay for needed court services.

Justice Carol A. Corrigan expressed concern that recommendation 5(c) could mean that in some instances where the council converted an SJO position to a judgeship, the SJO holding that position applied to the Governor for a judicial position and was not selected. She asked whether this was a policy statement the council wanted to make.

Judge Wayne L. Peterson said that presiding judges requested that the AOC conduct a survey statewide to see how many of the more than 400 commissioners and referees are doing pro tem work, are sitting full time in family and juvenile law departments, and are functioning by statutory definition as SJOs. He noted that presiding judges have expressed concern about which SJO positions will be converted. Judge Peterson asked whether a vacancy occurs when an SJO resigns, retires, or is removed from a position, or is it only potentially a vacancy? Ms. Sipes clarified that the recommendation should read that a vacancy occurs when an SJO resigns, retires, or is removed from a position.

Judge Peterson suggested that the Presiding Judges Advisory Committee, in addition to the Family and Juvenile Law Advisory Committee, be consulted on how to acquire, retain, and train judges interested in a family and juvenile law assignment.

Judge Aviva K. Bobb suggested additional language be added to recommendation 5c to clarify that it would not violate the policy against displacing current SJOs, but rather would allow the current officeholder to be appointed to a newly converted judge position. Staff agreed that recommendation 5c would be applied consistently with Judge Bobb's interpretation.

Mr. Frederick K. Ohlrich noted the extraordinary need for new judges as evidenced in the large number of vacancies in judicial positions. He suggested that, in the short term, courts rely on the resources available through the Chief Justice's powers to assign retired judges to assist the courts with a workload need rather than hiring people temporarily or creating new positions.

Judge Ronald M. Sabraw said that a commissioner who applies for appointment to a judgeship but is not selected may be considered by the public to be less qualified. He asked staff to consider this scenario.

Mr. Michael Case asked whether the intent of recommendation 6 (regarding no SJO losing his or her employment solely as a result of the adoption of the recommended policies) was that the council was fixing the current number of commissioners. Mr. Vickrey stated that the intent was to allow: presiding judges the flexibility and authority to make decisions about SJOs at the local level (for example, due to performance issues); local courts the ability to make decisions based on workload; and the council to make policy decisions based on the results of the judgeship needs assessment. The policy is stating that the goal of converting SJO positions to judgeship positions shall not be accomplished just by fiat eliminating positions.



*Council action:*

Justice Huffman moved that the Judicial Council:

1. Direct staff to present to the Rules and Projects Committee draft rules of court recognizing that subordinate judicial officers are a valued part of the California court system because of the expertise they bring to the bench and the flexibility they allow local courts and establishing the following policy:
  - a. The primary role of subordinate judicial officers should be to perform subordinate judicial duties; but
  - b. A subordinate judicial officer may appropriately sit as a temporary judge where lawful if his or her presiding judge determines that, because of a shortage of judges, it is necessary for the effective administration of justice.
2. Direct staff to propose to the Policy Coordination and Liaison Committee legislation providing that:
  - a. Upon a recommendation by the Judicial Council developed after review of legislatively established criteria and in consultation with the affected court, a vacant subordinate judicial officer position shall be converted to a judgeship. The Governor may appoint a judge to fill the new judgeship; and
  - b. A vacancy occurs when an SJO resigns, retires, or is removed from his or her position.
3. Direct staff to develop rules of court establishing minimum qualification and training standards for subordinate judicial officers and present those rules to the Rules and Projects Committee for review and circulation.
4. Direct the Family and Juvenile Law Advisory Committee, the Trial Court Presiding Judges Advisory Committee, and AOC staff to consider and advise the council on methods for acquiring, retaining, and training judges with interest in family and juvenile law and for establishing assignment and length of service criteria in these areas.
5. Direct the Administrative Director to establish a working group, composed of members of the appropriate advisory committees, and other interested judges, subordinate judicial officers, bar members, and AOC staff, charged with evaluating issues subsequent and related to the implementation of recommendations 1–4 as follows:
  - a. Evaluate the current titles and statutory duties of subordinate judicial officers and, if appropriate, make recommendations for changes not inconsistent with the other recommendations in this report;
  - b. Study and report to the council on the advisability of assigning certain subordinate judicial duties (e.g., traffic infractions) to nonjudicial officers;
  - c. Study and report to the council on the advisability of extending the conversion process established as a result of recommendation 2 to allow conversion of subordinate judicial positions that are not vacant into superior court judge positions;
  - d. Review, comment, and make recommendations on the work products resulting from recommendations 1–4, 6, and 7.

6. Adopt the following policy: No subordinate judicial officer shall lose his or her employment solely as a result of the policies, rules, and legislation proposed by recommendations 1–5 above.
7. Approve the following interim (January 1, 2001 through June 30, 2001) process for creating new subordinate judicial officer positions:
  - a. For any subordinate judicial officer positions requested after January 1, 2001, courts must apply to the Judicial Council through the AOC, documenting the court's subordinate judicial officer workload and relating the amount and type of workload to the need for a new subordinate judicial officer position. Courts must also document the availability of permanent funding for the requested position within the court's fiscal year 2000–2001 budget; and
  - b. Staff will analyze applications in light of the policy set forth in recommendation 1 and make a recommendation to the Judicial Council on whether the application should be granted.

The motion passed.

**Item 12      Rules on the Judicial Council's Litigation Management Committee and Trial Court Litigation Management (adopt Cal. Rules of Court, rules 6.14 and 6.800)**

Mr. Michael Bergeisen, AOC General Counsel, and Ms. Sue Hansen, AOC Supervising Attorney, presented the report. Mr. John J. Collins recused himself from the presentation and discussion of the report and requested that a letter regarding his possible conflict of interest on this agenda item sent to the Administrative Director on December 4, 2000, re trial court litigation be incorporated into the minutes.

Mr. Bergeisen noted that recently enacted Senate Bill 1533 requires the council to adopt rules re litigation. AOC staff and the council's Litigation Management Committee recommended adoption of two rules.

One rule details the oversight role of the Litigation Management Committee regarding cases involving trial courts that seek recovery of \$50,000 or more, or that raise important policy issues. Mr. Bergeisen stated that staff would provide periodic reports to the Litigation Management Committee and trial courts on the litigation management program and cases.

Ms. Hansen stated that the intent of the other proposed rule was to ensure that trial courts are provided with timely, quality legal assistance and to promote the cost-effective, prompt, and fair resolution of actions and claims that affect the trial courts, trial court judges, subordinate judicial officers, court executive officers, or employees. The rule sets forth the duties of the AOC's General Counsel and trial courts regarding claims and lawsuits.

Justice Baxter asked whether there was any need to require service on AOC staff or was staff confident that pleadings would be forwarded to the AOC. Mr. Bergeisen responded that the recommended rule requires trial courts to immediately inform the AOC of disputes, claims, and lawsuits. Chief Justice George suggested that staff send a letter to all judges informing them of the new procedure and including the name and other contact information for the staff involved in the litigation management program.

Judge Ronald B. Robie commented that the litigation management program supplants the legal services provided by counties to trial courts. An important component of the program is providing legal advice to courts before a dispute is filed, with the goal of preventing lawsuits. Mr. Bergeisen reported that the Office of the General Counsel had experienced a significant increase in calls from courts requesting prelitigation assistance.

Mr. Rex Heeseman suggested amending rule 6.14 to delete the words “and claims in cases filed” to clarify the scope of litigation oversight.

Justice Corrigan suggested rewording rule 6.14 to clearly state that trial court judges and employees and AOC employees are covered by the litigation management program.

Mr. Alan Slater suggested that county counsel be notified of the new policies and procedures since frequently there are dual claims against the court and county.

Mr. Case noted that the Rules and Projects Committee considered these rules and suggested that staff develop criteria for determining when litigation raises important policy issues that should be considered, if at all, by the entire council.

*Council action:*

Justice Huffman moved that the Judicial Council, effective January 1, 2001:

1. Adopt rule 6.14, regarding the role and responsibilities of the Litigation Management Committee, revising subdivision (a) to read as follows: The Litigation Management Committee must oversee litigation against trial court judges, the Judicial Council, the Administrative Office of the Courts, the trial courts, and the employees of those bodies that seek recovery of \$50,000 or more or raise important policy issues ....
2. Adopt rule 6.800, regarding management of all claims and lawsuits affecting the trial courts.
3. Amend its litigation management policies adopted at the council’s December 1999 meeting, and amended in July 2000, as shown on the attached revised policy.

The motion passed.

### **Item 13      Legislative Recommendations for Trial Court Funding Cleanup and Modification (Round One)**

Mr. Michael Fischer, Senior Attorney in the AOC's Office of the General Counsel, and Ms. Jody Patel, Legislative Advocate in the AOC's Office of Governmental Affairs, presented the report. Mr. Fischer stated that the report contained recommendations of the Trial Court Funding Working Group concerning changes to the Lockyer-Isenberg Trial Court Funding Act and related statutes. The recommendations are designed to provide a more uniform process for budget development, ensure that the authority and responsibility for trial court budget and fiscal affairs are appropriately placed, and make appropriate changes to the relationships between the trial courts and the counties and between the trial courts and the Judicial Council in light of full state funding of the trial courts. He said that the revisions would also correct statutory and drafting errors and remove obsolete provisions involving the courts.

He summarized the recommendations. One recommendation is that the council sponsor legislation to amend statutes to make changes to the organizational and financial arrangements between the council, trial courts, counties, and other state agencies in light of state trial court funding and trial court unification. He noted that these proposals are not controversial.

Mr. Fischer reported that the working group recommended that the council delegate to the Policy Coordination and Liaison Committee, in conjunction with the chairs of the council's other internal committees, decisions on whether the council should sponsor legislation on other items. Mr. Fischer pointed out that the recommendation involving changes to statutory provisions relating to the Trial Court Budget Commission (TCBC) is more controversial. He reported that, in response to comments, the proposal was revised to clarify the council's intent to ensure trial court input in the trial court budget process.

Mr. Arthur Sims commented that the council is being asked to approve policies in concept. He said that this could have unintended negative consequences and suggested that the proposal regarding the TCBC be circulated widely for comment. Mr. Vickrey clarified that the proposal is to amend legislation relating to the TCBC and not to change the rule of court governing the committee. He noted that the council will have an opportunity to provide input into any revisions in the budget development process and the role of the TCBC. He agreed that any changes to the rule of court for the TCBC should be made after consultation with a wide range of people.

Justice Huffman noted that the statutory changes the council is being asked to approve would provide the council with the flexibility to amend the rule of court. The proposal concerns the statutory requirements for the TCBC.

*Council action:*

Justice Huffman moved that the Judicial Council:

1. Sponsor legislation amending portions of the Civil Code, Code of Civil Procedure, Government Code, Penal Code, and Welfare and Institutions Code to make changes to the organizational and financial arrangements between the Judicial Council, trial courts, counties, and other state agencies in light of state trial court funding and trial court unification; and
2. Delegate to the Policy Coordination and Liaison Committee (PCLC), with the chairs of the council's other internal committees or their designees sitting as additional voting members, decisions on whether the council should sponsor further items to be presented to the PCLC after discussions with other interested groups. All members of the council would be notified of the proposals being presented and given an opportunity for input.

The motion passed.

**Item 14      Judicial Council Distinguished Service Awards for 2000**

Justice Baxter reported that awards are presented annually to people in the judicial community for significant and positive contributions to court administration in California. Chief Justice George and the chairs of the council's internal committees solicited nominations. The internal committee chairs evaluated the nominations and recommended this year's award recipients. The awards will be presented at the California Judicial Administration Conference (CJAC) on February 2, 2001.

*Council action:*

Justice Huffman moved that the council ratify the action of the internal committee chairs approving the winners of the 2000 Judicial Council Distinguished Service Awards:

1. Jurist of the Year Award:
  - a. Hon. Judith McConnell, Judge, Superior Court of San Diego County; and
  - b. Hon. Veronica McBeth, Judge, Superior Court of Los Angeles County;
2. Judicial Administration Award:
  - a. Ms. Christine Patton, Executive Officer, Superior Court of Santa Cruz County; and
  - b. Mr. Stephen V. Love (Ret.), Chief Executive Officer, Superior Court of Santa Clara County;
3. Bernard E. Witkin Amicus Curiae Award: Mr. Andrew Guilford, Former President of the State Bar of California, Law Offices of Shepard, Mullin, Richter and Hampton.

The motion passed.

## Item 15      **Ralph N. Kleps Awards for 2000**

Justice Arthur G. Scotland, chair of the California Judicial Administration Conference (CJAC) Planning Committee, presented the report. He noted that the Judicial Council annually approves the court programs selected by the CJAC Planning Committee to receive the Ralph N. Kleps Awards for Improvement in Judicial Administration.

Justice Scotland reported that the council has been presenting this prestigious award created in honor of Ralph N. Kleps, the first Administrative Director of the California Courts. The purpose of the Ralph N. Kleps Award is to recognize and honor the contributions made by individual courts in California to the administration of justice. He reported that the CJAC Planning Committee serves as the jury for the award. The criteria for the award include improvements in the administration of the courts that reflect innovation, fulfill the intent of at least one goal of the Judicial Council's strategic plan, and can be transferred to other courts.

Justice Scotland said that courts submit their applications for the award in one of five categories, the first four based on court size and the other based on cross-county collaboration. Justice Scotland reported that 46 applications were received for all categories.

### *Council action:*

Justice Huffman moved that the Judicial Council approve the following programs as winners of the Ralph N. Kleps Award for 2000:

- *Category 1 (courts with 0–4.9 authorized judicial positions or AJPs)*  
**Second Appellate District, Division Six**  
Up Close and Personal
- *Category 2 (courts with 5–14.9 AJPs)*  
**Superior Court of California, County of Butte**  
Reality Check
- *Category 3 (courts with 15–50 AJPs)*  
**Superior Court of California, County of Fresno**  
Keep Kids in School (KKIS)  
**Superior Court of California, County of San Joaquin**  
Jury Duty Compliance Program  
**Superior Court of California, County of Ventura**  
Mobile Self-Help Center
- *Category 4 (50+ AJPs)*  
**Superior Court of California, County of Alameda**  
Enhancement of Court Website — E-Commerce  
**Superior Court of California, County of Los Angeles**  
Sara Berman Adoption Saturdays  
**Superior Court of California, County of Orange**  
Domestic Violence Training and Awareness Program

**Superior Court of California, County of Riverside**

Bagel Time

**Superior Court of California, County of San Bernardino**

Court Community Outreach and Education Through Countywide Public Service  
Announcements

**Superior Court of California, County of San Diego**

Family Domestic Violence Solutions Center

- *Cross-County*

**First Appellate District**

Electronic Reporter's Transcripts on Appeal

The motion passed.

**Item 16      Fiscal Year 1999–2000 Year-End Financial Report**

Mr. Frank Schultz, Manager of the AOC's Budget Unit, presented the report. He stated that revenues for fiscal year 1999–2000 totaled \$1.729 billion, while expenditures were \$1.723 billion. He reported that the state's General Fund provides 52 percent of the courts' revenue. County Maintenance of Effort payments (MOEs) provide 39 percent of funding. These two sources are fairly stable and timely. Civil filing fees, which make up the remainder of the state's trial court funding, are variable and this year fell below projections.

Mr. Schultz said that the major components of the judicial system's financial report are fund condition statements for the Trial Court Trust Fund, the Trial Court Improvement Fund, and the Judicial Administration Efficiency and Modernization Fund. He reported that all funds finished the fiscal year in the black with positive fund balances.

For information only; no action necessary.

**Item 17      Clarification of Years of Service for Calculating Judges' Vacation  
(amend Cal. Rules of Court, rule 6.603(c)(2))**

Ms. Melissa Johnson, Managing Attorney of the Office of General Counsel, presented the report. She stated that in August 2000, the council adopted revised rules on the duties of presiding judges, including rules on vacation for judges. These go into effect on January 1, 2001. The vacation rules provide for an increased number of vacation days with additional years of service.

Recently, as courts have been getting ready to implement the new rules, they have raised questions about whether prior service as a commissioner or municipal court judge counts as years of service for calculating the vacation for a superior court judge. The issue of

prior years of service was raised during the comment process and addressed in the report to the council. That report makes clear that years of service as a commissioner were not meant to be included. However, the report did not address prior service as a municipal court judge, and the rule itself says nothing about this issue.

Ms. Johnson said that to avoid any uncertainty and to ensure uniform interpretation of the rule statewide, staff have proposed that the rule be amended to refer to years of service “as a California judge.” This would include prior service as a municipal, or even a justice, court judge. Ms. Johnson reported that the suggested revision was discussed at a recent meeting of the Trial Court Presiding Judges Advisory Committee and no objections were raised.

*Council action:*

Justice Huffman moved that the Judicial Council approve amending rule 6.603(c)(2), effective January 1, 2001, to clarify that “years of service,” for the purpose of determining the amount of vacation days, includes all service as a California judge.

The motion passed.

**Circulating Order Approved**

**Circulating Order CO-00-10: Approval of a Call for a Vote in Monterey County  
Pursuant to SCA 4**

For information only; no action necessary.

**Appointment Orders**

For information only; no action necessary.

The meeting was adjourned at 11:05 a.m.

Respectfully submitted,

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William C. Vickrey  
Secretary